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Insurance

Insurance; catastrophic health coverage

Health and Safety Code §§ 232.5, 239 (new); § 231 (amended).

AB 1789 (Elder); 1991 STAT. Ch. 740

Under existing law, the State must contract with specifically qualified insurers¹ to provide catastrophic health insurance² for purchase by California residents³ to cover medical costs exceeding \$50,000 for a single medical condition.⁴ Chapter 740 establishes a lifetime benefit cap of \$1,000,000.⁵

AS

1. See CAL. HEALTH & SAFETY CODE § 231(c) (amended by Chapter 740) (definition of insurer). See also *id.* § 235(a)-(c) (West Supp. 1991) (requiring that the insurer be financially stable, self-supporting, and accurate in its advertising).

2. See *id.* § 231(a) (amended by Chapter 740) (definition of catastrophic health insurance).

3. See *id.* § 231(b) (amended by Chapter 740) (definition of resident).

4. *Id.* § 231(a) (amended by Chapter 740). See *id.* § 231(d) (amended by Chapter 740) (providing a list of covered health care services). The catastrophic insurance will be made available at no cost to the state. *Id.* § 230(b) (West Supp. 1991). The Legislature's apparent intent in providing this health coverage is to help residents avoid the financial devastation which sometimes results from the lack of or exhaustion of insurance coverage for the medical costs of a single serious illness or injury. *Id.* § 230(a) (West Supp. 1991). See also *Review of Selected 1990 California Legislation*, 22 PAC. L.J. 323, 622 (1991) (discussing the enactment of catastrophic health insurance coverage in California).

5. CAL. HEALTH & SAFETY CODE § 231(a) (amended by Chapter 740). The director may also modify the provided coverage if it is in the best interests of the program. *Id.* § 239 (enacted by Chapter 740).

**Insurance; childrens' comprehensive medical care requirement-
-group health insurance policies**

Health and Safety Code § 1374.56 (new); Insurance Code
§§ 10121.6, 11516.1 (new).
AB 2118 (Wright); 1991 STAT. Ch. 1152

Existing law provides that when a husband and wife are both enrolled in a group policy,¹ each spouse and their dependents² are entitled to the maximum contractual benefits of the master policy.³ Chapter 1152 prohibits health insurers⁴ which provide dependent coverage from excluding a dependent child from coverage, upon application, because the child does not live with the parent covered under the policy.⁵

CWE

Insurance; denial of coverage for participation in AIDS vaccine trials

Health and Safety Code § 199.52 (new).
AB 1287 (Vasconcellos); 1991 STAT. Ch. 703

Under existing law, health insurers¹ may not make insurance coverage conditional upon an applicant's submission to an acquired

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1. See CAL. INS. CODE § 12671(a) (West 1988) (definition of group policy).
 2. See *id.* § 10128.1(b) (West Supp. 1991) (definition of dependent).
 3. *Id.* § 10121.5(a) (West Supp. 1991).
 4. See *id.* § 11627 (West 1988) (definition of insurer).
 5. CAL. HEALTH & SAFETY CODE § 1374.57(a) (enacted by Chapter 1152); CAL INS. CODE §§ 10121.6(a), 11516.1(a) (enacted by Chapter 1152).

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1. See CAL. HEALTH & SAFETY CODE § 199.52(4)(b) (enacted by Chapter 703) (enumerating types of health insurers covered).

immunodeficiency syndrome (AIDS)² blood test.³ Insurers may, however, refuse to insure based on positive results from an enzyme-linked immunosorbent assay (ELISA) test⁴ and Western Blot Assay⁵ performed with the applicant's informed consent,⁶ or if the applicant has been diagnosed by a medical professional as having AIDS or AIDS-related complex (ARC).⁷ Chapter 703

2. See J.H. Flaskerud, *Overview: AIDS/HIV Infection and Nurses' Needs for Information*, in AIDS/HIV INFECTION: A REFERENCE GUIDE FOR NURSING PROFESSIONALS 1-6 (1989) (definition of Acquired Immunodeficiency Syndrome). See generally S. BAKERMAN, M.D., PH.D., UNDERSTANDING AIDS 1-4 (1988) (providing an overview of the development, detection and treatment of AIDS).

3. CAL. INS. CODE § 799.09 (West Supp. 1991).

4. See *id.* § 799.01(a) (West Supp. 1991) (definition of Enzyme Linked Immunosorbent Assay). See also Sandler, Dodd & Fang, *Diagnostic Tests for HIV Infection: Serology*, in AIDS: ETIOLOGY, DIAGNOSIS, TREATMENT, AND PREVENTION 121-27 (V. DeVita, Jr., S. Hellman & S. Rosenberg 2d ed. 1988) [hereinafter DIAGNOSTIC TESTS] (describing and analyzing the enzyme-linked immunosorbent assay test); S. BAKERMAN, UNDERSTANDING AIDS [hereinafter UNDERSTANDING AIDS] 94-100 (1988) (explaining the mechanics of enzyme-linked immunosorbent assay tests).

5. See CAL. INS. CODE § 799.01(c) (West Supp. 1991) (definition of Western Blot Assay). See generally DIAGNOSTIC TESTS, *supra* note 4, at 127-31 (analyzing and describing the Western Blot Assay test); UNDERSTANDING AIDS, *supra* note 4, at 100-02 (1988) (describing the Western Blot Assay test procedure and methodology). The Western Blot Assay test detects the presence of human immunodeficiency virus antibodies in the patient's bloodstream. DIAGNOSTIC TESTS, *supra* note 4, at 127-31; UNDERSTANDING AIDS, *supra* note 4, at 100.

6. See CAL. INS. CODE §§ 799.03(a)(1)-(2) (West Supp. 1991) (establishing standards of information that must be given before a patient may be deemed to have given informed consent to an insurer-requested HIV test). The results of these tests may be the basis of the insurer's refusal to issue coverage only if the tests were performed by or for the insurer and with the applicant's informed consent. *Id.* § 799.02 (West Supp. 1991). But cf. ILL. ANN. STAT. ch. 111 1/2, ¶ 7307 (Smith-Hurd Supp. 1990) (allowing physicians to perform an HIV test without the subject's informed consent when the subject has donated semen or human body tissue, or when a health care provider, policeman, or firefighter has come into direct contact with the blood or bodily fluids of an individual in a fashion that may transmit HIV).

7. CAL. INS. CODE § 799.02 (West Supp. 1991). See Flaskerud, *Overview: AIDS/HIV Infection and Nurses' Needs for Information*, in AIDS/HIV INFECTION: A REFERENCE GUIDE FOR NURSING PROFESSIONALS 3 (1989) (providing a brief description of AIDS, ARC, and HIV). For a point/counterpoint discussion of issues related to AIDS and health insurers, see Comment, *The AIDS Insurance Crisis: Underwriting or Overreaching?*, 100 HARV. L. REV. 1782 (1987) and Comment, *AIDS and Insurance: The Rationale for AIDS-Related Testing*, 100 HARV. L. REV. 1806 (1987). See generally M. Scherzer, *Insurance*, in AIDS AND THE LAW: A GUIDE FOR THE PUBLIC 185 (1987) (analyzing the competing interests of health insurers and AIDS patients) and CLOSEN, HERMANN, HORNE, ISAACMAN, JARVIS, LEONARD, RIVERA, SCHERZER, SCHULTZ AND WOJCIK, AIDS: CASES AND MATERIALS 533 (1989) (providing a broad overview of AIDS and health insurance as well as excerpts from topical law review articles).

prohibits insurers from denying coverage to individuals solely because of their participation in an approved⁸ vaccine trial.⁹

JPJ

Insurance; disability and unemployment compensation

Unemployment Insurance Code §§ 1265.5, 2627.5, 2675,
2627.7, 2656, 2706.2, 2708(amended)
AB 540 (Margolin); 1991 STAT. Ch. 1134
AB 1208 (Burton); 1991 STAT. Ch. 700

Under existing law, vacation pay earned but not paid prior to termination of employment is not considered to be within the definition of wages;¹ thus, vacation pay does not affect the computation of unemployment compensation.² Also, prior law did not consider wages to include vacation pay earned but not paid prior to unemployment due to disability.³ Chapter 1134 exempts

8. See CAL. HEALTH & SAFETY CODE § 199.52(4)(b) (enacted by Chapter 703) (identifying participants in vaccine trials approved by the United States Food and Drug Administration or the Food and Drug Branch of the California Department of Health Services as those protected by this section).

9. *Id.* (enacted by Chapter 703). Chapter 703 also requires the sponsor of a clinical trial to file a confidential certificate for each participant with the Department of Health Services. *Id.* § 199.52(4)(c) (enacted by Chapter 703). This certificate may be released only upon written authorization from the participant or a designated substitute. *Id.* § 199.52(4)(d) (enacted by Chapter 703). A person may be given authority to consent to release of the confidential information contained in the certificate on behalf of the individual named only at the time the certificate is created. *Id.*

1. See CAL. UNEMP. INS. CODE § 1252(c) (West 1986) (definition of wages).

2. *Id.* § 1265.5 (amended by Chapter 1134). See generally *id.* §§ 1251-1265.1 (West 1986 & Supp. 1991) (promulgating eligibility requirements for unemployment compensation).

3. 1976 Cal. Stat. ch. 1054., sec. 1, at 4682 (amending CAL. UNEMP. INS. CODE § 1265.5) (amended by Chapter 1134). See CAL. UNEMP. INS. CODE § 2626 (West 1986) (definition of disability).

vacation pay from being considered wages only when the payment has not occurred before termination of employment.⁴

Under existing law, an unemployed and disabled worker must wait seven days to receive disability benefits.⁵ The waiting period may be waived, however, if the worker obtains a certificate from a hospital stating that the worker has received a day's treatment, and will be disabled for more than eight days as a result of the treatment.⁶ Chapter 700 allows the seven day period to be waived if the worker has received treatment in a post surgical recovery pilot facility,⁷ and is disabled for more than eight days as a result of the treatment.⁸

PLJ

Insurance; disclosure of discounts

Insurance Code § 11580.15 (amended).
SB 225 (Robbins); 1991 STAT. Ch. 160

Under existing law, all insurers¹ issuing or renewing motor vehicle liability policies² must disclose to the applicant, in writing,

4. CAL. UNEMP. INS. CODE § 1265.5 (amended by Chapter 1134). *See* Los Angeles Turf Club v. Unemployment Insurance Board, 117 Cal. App. 3d 454, 457, 172 Cal. Rptr. 803, 805 (1981) (stating that prior to the enactment of California Unemployment Insurance Code § 1265.5, earned but unpaid vacation pay was considered wages and, postponed the payment of unemployment benefits).

5. CAL. UNEMP. INS. CODE § 2627 (West 1986).

6. *Id.* § 2627.7 (amended by Chapter 700).

7. *See* CAL. HEALTH & SAFETY CODE § 1250.9 (West Supp. 1991) (definition of post surgical pilot facility).

8. CAL. UNEMP. INS. CODE § 2627.7 (amended by Chapter 700). Chapter 700 also eliminates the requirement of obtaining a certificate but allows the Employment Development Department to use any means it deems reasonable to verify the claimant's stay in the hospital. *Id.*

1. *See* CAL. INS. CODE § 11627 (West 1988) (definition of insurer).

2. *See* CAL. VEH. CODE § 16054, 16450 (West Supp. 1991) (definition of motor vehicle liability policy).

all discounts that are available under the policy.³ Chapter 160 requires that the disclosure be a free standing document which brings the discount to the applicants attention.⁴

Prior law required this disclosure for both commercial and personal lines of motor vehicle insurance.⁵ Chapter 160 makes the disclosure applicable only to personal lines of insurance.⁶

CWE

Insurance; fire insurance--arson

Insurance Code § 2058 (new); §§ 1875, 1875.3, 1875.6, 2054 (amended); Penal Code § 1170.78 (new).
AB 1725 (Peace); 1991 STAT. Ch. 602

Under existing law, an authorized agency¹ must notify an insurer² if a fire loss may have been caused intentionally, once the agency determines that the investigation of the fire would not be jeopardized.³ Chapter 602 requires that the agency immediately

3. CAL. INS. CODE § 11580.15 (amended by Chapter 160). The categories of discounts may include: (1) Good drivers; (2) senior drivers; (3) students; (4) multiple cars; and (5) any other available discounts. *Id.* Existing law additionally requires insurers to disclose all discounts to its brokers and agents in writing. *Id.* Cf. *id.* § 10089.2(a) (West Supp. 1991) (requiring each insurer to disclose discounts to applicants or renewals of earthquake insurance); FLA. STAT. ANN. § 627.521 (West 1984) (requiring industrial life insurers to include a statement of discount in premium payment booklets for early payment). *See* CAL. INS. CODE § 1861.15 (West Supp. 1991) (requiring automobile insurers to sell policies to individuals who qualify for good driver's discounts). *See also id.* § 1861.025 (West Supp. 1991) (stating criteria for good driver discount).

4. CAL. INS. CODE § 11580.15 (amended by Chapter 160).

5. 1989 Cal. Stat. ch. 1272, sec. 1, at 4356 (enacting CAL. INS. CODE sec. 11580.15) (amended by Chapter 160).

6. CAL. INS. CODE § 11580.15 (amended by Chapter 160).

1. *See* CAL. INS. CODE § 1875(a) (amended by Chapter 602) (definition of authorized agency). Chapter 602 designates the Department of Insurance as an authorized agency. *Id.* An authorized agency is one that is "investigating or prosecuting arson in connection with a specific fire." *Id.*

2. *See id.* § 1875(b) (amended by Chapter 602) (definition of insurer).

3. *Id.* § 1875.3 (amended by Chapter 602).

advise the insurer without waiting for a determination of whether the investigation would be jeopardized.⁴

Existing law allows the insured carrying a valued fire insurance policy⁵ to collect the full amount of a loss up to the face value of the policy.⁶ Under Chapter 602, if the insured does not rebuild or replace the structure, the amount of recovery is limited to the replacement value of the property or the face amount of the policy, whichever is less.⁷

Existing law provides that if a person maliciously⁸ sets fire to an inhabited structure or property,⁹ the person is guilty of arson.¹⁰ Under Chapter 602, if the arsonist burned the property as retaliation against the owner or occupant of the property, or against a person whom the arsonist believed to be the owner or occupant, for an

4. *Id.* If the agency has already determined that the investigation would be jeopardized, the agency is not required to release the information to the insurer. *Id.*

5. *See id.* § 102 (West 1972) (definition of fire insurance policy).

6. *Id.* § 2055 (West 1972). *See id.* § 410 (West 1972) (specifying that a policy is either open or valued). Under a valued policy, prior to a loss, the insured property is valued at a certain amount, which is then stated on the face of the agreement. *Id.* § 412 (West 1972). *See id.* § 2054(a) (amended by Chapter 602) (providing that under a valued fire policy in the case of a total loss, an insured collects up to the face amount of the policy). An open policy provides that the value of the property under the policy, and therefore, the amount of the payment, is determined at the time of a loss. *Id.* § 411 (West 1972). *See id.* § 2051 (stating that under an open fire policy, the value of the property is as of "the time of the commencement of the fire"). *See Elliano v. Assurance Co. of America*, 45 Cal. App. 3d 173, 180, 119 Cal. Rptr. 653, 660 (1975) (holding that if the valuation clause, stating the policy amount, is not specifically inserted in the policy, the policy is an open policy). *See also* CAL. INS. CODE § 2053 (West 1972) (providing that the valuation clause shall be inserted in a valued policy).

7. *Id.* § 2058 (enacted by Chapter 602).

8. *See* CAL. PENAL CODE § 450(e) (West 1988) (definition of maliciously).

9. *See id.* § 450(d) (West 1988) (stating that a structure is inhabited if it is "currently being used for dwelling purposes whether occupied or not"). *See also id.* § 450(a) (West 1988) (definitions of structure); § 450(c) (West 1988) (definition of property).

10. *Id.* § 451(b) (West Supp. 1991).

eviction or legal action against the arsonist,¹¹ the court may impose an aggravated sentence.¹²

AS

Insurance; fraud

Insurance Code §§ 1875.10, 1875.11, 1875.12, 1875.13, 1875.14, 1875.15, 1875.16, 1875.17, 1875.20, 1875.21, 1875.22, 1875.23, 1872.95 (new); §§ 1872.8, 1876.2, 1876.3 (amended).

SB 953 (Committee on Insurance); 1991 STAT. Ch. 1222

Existing law requires any company licensed to write insurance in California to notify the Bureau of Fraudulent Claims¹ within 60 days after determining that a claim appears to be fraudulent.² Existing law also provides for an Automobile Insurance Claims Depository (Depository) within the Bureau of Fraudulent Claims

11. *See id.* § 1170.78 (enacted by Chapter 602) (specifying that the defendant need only believe that the property was occupied). *Compare id.* § 1170.78 (enacted by Chapter 602) *with* *People v. Jones*, 199 Cal. App. 3d 543, 548, 245 Cal. Rptr. 85, 89 (1988) (interpreting the language of California Penal Code section 450(d) to mean that a person must have a present intent to occupy the property at the time of the arson, not merely that the building is used for a dwelling; here, the defendant burned the dwelling in retaliation against his landlord for the previous day's eviction, so that although the building had been inhabited, the Court ruled that the defendant would be convicted of the lesser offense of arson of a structure).

12. CAL. PENAL CODE § 1170.78 (enacted by Chapter 602). *See id.* § 1170 (West Supp. 1991) (listing determinate sentencing guidelines). Chapter 602 requires the perpetrator to be convicted of a violation of California Penal Code section 451 before determining whether the arsonist should receive an aggravated sentence under California Penal Code section 1170.78. *Id.* § 1170.78 (enacted by Chapter 602).

1. *See* CAL. INS. CODE § 1872 (West Supp. 1991) (creating the Bureau of Fraudulent Claims).

2. *Id.* § 1872.4(a) (West Supp. 1991). *See Frommoethelydo v. Fire Insurance Exchange et al.*, 42 Cal. 3d 208, 211, 721 P.2d 41, 42, 228 Cal. Rptr. 160, 161 (1986) (holding that insurer's report to the Bureau is privileged).

which operates a common data base providing information on the investigation and prosecution of fraudulent automobile claims.³

Under Chapter 1222, an insurer who receives a fraudulent claim on an insurance policy⁴ must provide the claim information to the Depository within 20 days of the receipt of the claim.⁵ Chapter 1222 provides for the licensure of organizations as insurance claims analysis bureaus.⁶ Under Chapter 1222, insurers will be required to maintain a unit or division to investigate possible fraudulent claims.⁷ Chapter 1222 requires every insurer that receives a bodily injury, medical payment, or uninsured motorist claim made under an insurance policy to deposit that claim information with a licensed Insurance Claims Analysis Bureau.⁸

Under existing law, disciplinary bodies are obligated to cooperate with the Bureau of Fraudulent Claims and must provide it with facts and evidence of fraud when requested to do so.⁹ Chapter 1222 requires the Medical Board of California, the State Bar, and the Board of Chiropractic Examiners to designate

3. See CAL. INS. CODE § 1876 (West Supp. 1991) (creating automobile insurance claims depository). See *id.* § 1876(b) (stating that the purpose of the depository is to prevent fraud by identifying patterns of use by claimants and those providing services under automobile insurance claims). See generally Weikel and Efron, *Army of Scam Artists Milks Millions From Insurers*, *Officials Say*, L.A. Times, March 1, 1990, § A, at 30, col. 4 (Orange County ed.) (reporting on insurance fraud in California); Fasano, *Untying The Hands That Bind: State Regulation of Insurance*, 91 BEST'S REV. 7, 20, 1990 (discussing the shortcomings of state regulation of insurance).

4. CAL. INS. CODE § 660(a) (West Supp. 1991) (definition of policy). See also *id.* § 11622 (definition of policy under assigned risk plan).

5. *Id.* § 1876.2 (amended by Chapter 1222).

6. *Id.* § 1875.12(a) (enacted by Chapter 1222). See *id.* §§ 1875.11-1875.13 (enacted by Chapter 1222) (requiring and providing for the licensure of insurance fraud claims analysis bureaus, enumerating their functions and setting forth rules for their operation). See also *id.* § 1875.14 (enacted by Chapter 1222) (stating that the function of a bureau is to collect and disseminate information, promote training, and provide the Commissioner with information in an effort to suppress insurance fraud).

7. *Id.* §§ 1875.20 (enacted by chapter 1222). The unit must be established by July 1, 1992. *Id.* § 1875.22 (enacted by Chapter 1222). Insurers may use their own employees or contract with others to maintain this unit or division. *Id.* § 1875.21 (enacted by Chapter 1222). The cost incurred may be considered an administrative expense for rate-setting purposes. *Id.* § 1875.23 (enacted by Chapter 1222).

8. *Id.* § 1876.2 (enacted by Chapter 1222). Insurers subject to section 1876.20 of the Insurance Code should provide the information to the Automobile Insurance Claims Depository. *Id.*

9. *Id.* § 1872.4(d) (West Supp. 1991).

employees to investigate possible fraud by their licensees with respect to disability or motor vehicle insurance.¹⁰

RCO

Insurance; inspection requirements and protection of lienholder's interest in comprehensive and collision automobile insurance policies

Insurance Code §§ 406, 406.1, 406.2 (new); §§ 400, 401, 402, 403, 404, 405 (amended).
SB 291 (Johnston); 1991 STAT. Ch. 1056
(Effective April 1, 1992)

Existing law¹ requires an insurer² to inspect a private passenger automobile³ prior to the issuance or endorsement of a comprehensive⁴ or collision⁵ insurance policy,⁶ except under certain specified circumstances.⁷ Chapter 1056 extends the inspection requirement to any policy or endorsement providing

10. *Id.* § 1872.95(a) (enacted by Chapter 1222).

1. The existing law version of California Insurance Code sections 400 through 406 were to become effective on January 1st, 1992. Chapter 1056 delays implementation of the program until April 1st, 1992.

2. *See* CAL. INS. CODE § 23 (West 1972) (definition of insurer).

3. *See id.* § 11580.06(d) (West 1988) (definition of automobile). *Cf.* CAL. VEH. CODE § 465 (West 1987) (definition of a passenger vehicle).

4. *See* CAL. INS. CODE § 11580.07 (West 1988) (definition of comprehensive vehicle insurance). *Cf. id.* § 660(c) (West Supp. 1991) (definition of automobile physical damage insurance).

5. *See id.* § 660(d) (West Supp. 1991) (definition of collision automobile insurance).

6. *See id.* § 660(a) (West Supp. 1991) (definition of insurance policy).

7. *Id.* § 400(a) (amended by Chapter 1056). *See id.* § 401 (amended by Chapter 1056) (specifying when an inspection can be waived by insurer). An insurer is prohibited from applying the inspection provisions in a discriminatory manner or from representing that a private passenger insured is a commercial insured in order to avoid the inspection requirements. *Id.* §§ 406.1, 406.2 (enacted by Chapter 1056).

comprehensive or collision coverage to an insured for the first time by that insurer.⁸

Under prior law, if the automobile was not inspected in a timely manner,⁹ the insurer was required to suspend coverage.¹⁰ Under Chapter 1056, coverage cannot be suspended for failure to comply with the timely inspection requirement; however, until inspected, the payment on any claim is limited to the amount of the lienholder's interest¹¹ in the vehicle.¹² Chapter 1056 also provides that the enumerated inspection requirements are not to be construed as prohibiting the insurer from electing to inspect previously insured private passenger vehicles.¹³

Prior law authorized the use of the inspection report in the settlement of all collision or comprehensive claims.¹⁴ Chapter 1056 makes the use of an inspection report mandatory for collision or comprehensive claims which exceed \$2,000.00.¹⁵

BJJ

8. *Id.* § 400(a) (amended by Chapter 1056). All insureds are to be furnished with a pre-insurance inspection requirement letter by their agents or insurers. *Id.* § 402(e) (amended by Chapter 1056). Failure to provide the insured with this letter prevents the restriction of coverage under California Insurance Code section 402(c). *Id.*

9. *See id.* § 402(a) (amended by Chapter 1056) (allowing the inspection to be deferred upon request for seven business days if immediate inspection would seriously inconvenience the insured).

10. 1990 Cal. Stat. ch. 736, sec. 1, at 436 (enacting CAL. INS. CODE sec. 402(d)) (amended by Chapter 1056). The inspection must occur before expiration of the deferred or extended time period. CAL. INS. CODE § 402(c) (amended by Chapter 1056).

11. *See* CAL. INS. CODE § 402(c) (amended by Chapter 1056) (allowing payment of lienholder's interest to state or federal financial institutions only).

12. *Id.* (amended by Chapter 1056). The insurer is required to immediately notify the insured of this restriction in coverage. *Id.* § 402(d) (amended by Chapter 1056). Upon an insured's request, the insurer must inspect and reinstate the full coverage. *Id.* Cf. N.Y. INS. LAW § 3411(f) (McKinney 1985) (authorizing cancellation of physical damage coverage upon insured's refusal to allow inspection).

13. CAL. INS. CODE § 406 (enacted by Chapter 1056). Previously insured is defined as those private passenger vehicles with existing policies on or before March 31, 1992. *Id.* Chapter 1056 allows the insurer to use the costs of inspection as an administrative expense for purposes of ratesetting. *Id.* § 403(c) (amended by Chapter 1056).

14. 1990 Cal. Stat. ch. 736, sec. 1, at 436 (enacting CAL. INS. CODE sec. 403(e)) (amended by Chapter 1056).

15. CAL. INS. CODE § 403(e) (amended by Chapter 1056). The Insurance Commissioner may also make periodic increases in the \$2,000.00 figure to cover inflation. *Id.*

Insurance; mandatory offer of earthquake insurance

Insurance Code §§ 2081, 10083, 10086.1, 10089 (amended).
SB 348 (Robbins); 1991 STAT. Ch. 665

Under existing law, an insurer¹ is required to offer earthquake insurance when a policy of residential property insurance is issued, and whenever the policy is renewed.² Existing law requires, at a minimum, that the offer include coverage for the dwelling, personal property, and living expenses in a specified amount in the event the dwelling becomes uninhabitable due to earthquake.³ Chapter 665 provides that in the case of a non-owner-occupied residential dwelling, the offer of minimum living expenses may be waived.⁴

Existing law sets forth a standard form fire insurance policy and allows the insurer to limit its liability from fire damage as a result of an earthquake and to modify this form so long as it meets specified restrictions.⁵ Chapter 665 deletes earthquake insurance policies from this provision.⁶

CWE

1. See CAL. INS. CODE § 11627 (West 1988) (definition of insurer).

2. CAL. INS. CODE § 10081 (West Supp. 1991). The offer must be made within 60 days following the issuance or renewal of a residential insurance policy. *Id.* § 10083(a) (amended by Chapter 665). See *id.* (specifying the language that the offer must contain). See generally Comment, EARTHQUAKE INSURANCE: A PROPOSAL FOR COMPULSORY COVERAGE, 24 *Santa Clara L. Rev.* 971, 991 (1984) (discussing the benefits of requiring all property owners to purchase earthquake insurance).

3. CAL. INS. CODE § 10089(a) (amended by Chapter 665). See 1990 *Review of Selected 1990 California Legislation*, 22 PAC. L.J. 627 (1991) (discussing mandatory offer of earthquake insurance required in California). Existing law requires the additional living expenses to be offered in an amount no less than \$1,500. CAL. INS. CODE § 10089(a)(3) (amended by Chapter 665).

4. *Id.* § 10089(b) (amended by Chapter 665). This waiver must be made by the applicant or policy holder and must be in writing. *Id.*

5. *Id.* § 2081 (West Supp. 1991). See *id.* (requiring the fire insurer to include a declaration in red ink stating that the policy contains provisions not in the standard California form).

6. *Id.* § 2081 (amended by Chapter 665).

Insurance; surety--limit per undertaking

Insurance Code § 12090 (amended).
SB 1025 (Davis); 1991 STAT. Ch. 1020

Under existing law, a surety¹ insurer² shall not become a surety or reinsurer³ for one undertaking when its liability will be greater than ten percent of its capital and surplus.⁴ Chapter 1020 allows an admitted surety insurer,⁵ when determining its liability, to reduce its liability by either deposits with a surety insurer of admitted assets, or a clean, irrevocable letter of credit⁶, or both.⁷

CWE

Insurance; workers compensation

Business and Professions Code §§ 810, 2273, 2314, 2315, 6106.5, 6151, 6153, 6154 (amended); Insurance Code §§ 750.1, 750.2, 750.5, 1877, 1877.4 (new); §§ 750, 750.4, 1871.4, 1872.83, 1877.1, 1877.3, 1877.5 (new and amended); § 11670 (new, amended and renumbered); §§ 1871, 1872, 1872.3, 1872.9, 1873.3, 11880 (amended); Labor Code §§ 139.4, 139.43, 139.45, 3215, 3217, 3218,

1. See CAL. CIV. CODE § 2787 (West 1974) (definition of surety). Cf. CAL. CIV. PROC. CODE § 995.185(a) (West Supp. 1991) (definition of surety).

2. See CAL. INS. CODE § 11627 (West 1988) (definition of insurer).

3. See *id.* § 620 (West 1972) (definition of reinsurance contract).

4. *Id.* § 12090(a) (amended by Chapter 1020). Many states limit the risk on a single subject of insurance to ten percent of the insurers surplus. See, e.g., ALA. CODE § 27-5-11 (West 1990); DEL. CODE ANN. tit. 18, § 909 (1990); IDAHO CODE § 41-2635 (1990); KY. REV. STAT. ANN. § 304.5-120 (1991); ME. REV. STAT. ANN. tit. 24-A, § 721 (West 1990); NEV. REV. STAT. ANN. § 681A.100 (Michie 1989); VT. STAT. ANN. tit. 8, § 3371 (1985).

5. See CAL. CIV. PROC. CODE § 995.120(a) (West Supp. 1991) (definition of admitted surety insurer).

6. See CAL. COM. CODE § 5103(a) (West 1964) (definition of letter of credit); CAL. IN. CODE § 12100(e)(4) (West Supp. 1991) (definition of letter of credit as collateral).

7. CAL. INS. CODE § 12090 (amended by Chapter 1020).

3761, 5803.5, 6410.5 (new); §§ 62.6, 5401.7 (new and amended); §§ 4903, 4906, 5501, 5710 (amended); Penal Code § 549 (new and amended).

AB 1673 (Margolin); 1991 STAT. Ch. 934

SB 1218 (Presley and Robbins); 1991 STAT. Ch. 116

Under existing law, the employment of cappers,¹ steerers,² or other persons to procure patients, constitutes unprofessional conduct and is punishable as a misdemeanor.³ Under Chapter 116, the employment of runners⁴ also constitutes unprofessional conduct, and makes the use of a runner, capper, or steerer a public offense that will be punished as a felony⁵ or a misdemeanor.⁶

Existing law further provides that any person who acts as a runner or capper for an attorney, or solicits business for an attorney in certain locations,⁷ or solicits another person to do so is guilty of a misdemeanor.⁸ Chapter 116 instead provides that such conduct may be punished as either a misdemeanor or felony.⁹ Moreover,

1. See CAL. BUS. & PROF. CODE § 6151(a) (amended by Chapter 116) (definition of capper).

2. See BLACK'S LAW DICTIONARY 1267 (5th ed. 1979) (definition of steerer).

3. CAL. BUS. & PROF. CODE §§ 2273(a), 2314(a) (amended by Chapter 116). See *id.* § 2315(a) (amended by Chapter 116) (providing that punishment must constitute a fine of not less than \$200 nor more than \$1,200, or by imprisonment in the county jail for no less than 60 days nor more than 180 days, or both a fine and imprisonment).

4. See *id.* § 6151(a) (amended by Chapter 116) (definition of runner).

5. See CAL. PENAL CODE § 17(a) (West Supp. 1991) (definition of felony).

6. CAL. BUS. & PROF. CODE §§ 2273, 2314(b), 2315(b), 6153 (amended by Chapter 116). A violation of section 2273 is a public offense punishable upon a first conviction by imprisonment in the county jail for a term not exceeding one year, or upon a second or subsequent conviction by imprisonment in the county jail for a term not exceeding one year or by imprisonment in the county jail for 16 months or two or three years, or by a fine not exceeding \$10,000, or both a fine and imprisonment. *Id.* §§ 2315(b), 6153 (amended by Chapter 116). See CAL. PENAL CODE § 17(b) (West Supp. 1991) (definition of misdemeanor).

7. See *id.* § 6152(a)(1) (West 1990) (stating that it is unlawful for any person to solicit business for an attorney in and around state prisons, county jails, city jails, city and county receiving hospitals, county hospitals, justice courts, municipal courts, superior courts, or in any public institution or in any public place or on any public street or highway or in and about private hospitals, sanitariums or in and around any private institution or on private property of any kind).

8. *Id.* § 6153 (amended by Chapter 116).

9. *Id.* § 6153 (amended by Chapter 116). Punishment will be by imprisonment in the county jail for a term not exceeding one year for first convictions; and imprisonment in the county jail for a term not exceeding one year, or imprisonment in the state prison for 16 months or two or three years, or by a fine exceeding \$10,000, or both a fine and imprisonment for subsequent convictions. *Id.* § 6153 (amended by Chapter 116). In any action against an attorney or law firm, Chapter 116 also

under Chapter 116 and Chapter 934, it is a crime for specified persons¹⁰ to either offer, deliver, receive, or accept any rebate, refund, commission, or other consideration as compensation¹¹ or inducement for referring or procuring clients, cases, or customers.¹²

Existing law further provides that it is a crime, punishable as a misdemeanor or felony, for any firm, corporation, partnership, association, or any person to solicit or refer any business to any individual or entity with knowledge¹³ or with reckless¹⁴ disregard for whether the individual or entity who is solicited or referred, intends to commit insurance or workers' compensation fraud.¹⁵

requires the attorney or firm to be divested of fees and other compensation pursuant to the Unfair Practices Act. *Id.* § 6154 (amended by Chapter 934). *See also* *Kitsis v. State Bar*, 23 Cal. 3d 857, 866, 592 P.2d 323, 329, 153 Cal. Rptr. 836, 842 (1979) (holding that attorneys are usually disciplined by suspension for using runners and cappers to solicit professional employment, although attorneys have been disbarred for solicitation when they had also committed acts involving moral turpitude and dishonesty); *Hutchins v. Municipal Court of Santa Monica*, 61 Cal. App. 3d 77, 87, 132 Cal. Rptr. 158, 165 (1976) (finding that an attorney who employs runners or cappers to solicit business may be held criminally liable for aiding and abetting, and conspiracy); *In re Arnoff*, 22 Cal. App. 3d 740, 746-47, 586 P.2d 960, 964, 150 Cal. Rptr. 479, 483 (1978) (holding that the main objective of attorney disciplinary proceedings is to protect the public and the courts for the official ministrations of persons not fit to practice law). Further, the use of runners and cappers by an attorney in order to solicit business is not protected by the First Amendment. *Id.* at 746, 586 P.2d at 963, 150 Cal. Rptr. at 482.

10. *See* CAL. INS. CODE § 750 (enacted by Chapter 116 and amended by Chapter 934) (referring to any person who processes, presents, or negotiates insurance policy claims).

11. *See* CAL. LAB. CODE § 3207 (West 1989) (definition of compensation).

12. CAL. INS. CODE § 750 (enacted by Chapter 116 and amended by Chapter 934); CAL. LAB. CODE § 3215 (enacted by Chapter 116). First convictions for violating section 750(a) of the Insurance Code are punishable by: (1) imprisonment in the county jail for a term not exceeding one year; (2) imprisonment in the state prison; (3) a fine not exceeding \$10,000; (4) or both. CAL. LAB. CODE § 750(b)(1) (amended by Chapter 934). Second convictions are punishable by imprisonment in the state prison. *Id.* § 750(b)(2) (amended by Chapter 934). A violation of section 3215 of the Labor code constitutes a public offense, and first time offenders will be punished by imprisonment in the county jail for not more than one year, imprisonment in the state prison, a fine not exceeding \$10,000, or both incarceration and fine; and second time offenders will be punished by imprisonment in the state prison. CAL. LAB. CODE § 3218 (enacted by Chapter 116). *See also* CAL. INS. CODE §§ 750.4 (enacted by Chapter 116 and amended by Chapter 934); § 750.5 (enacted by Chapter 116) (providing for exceptions to Sections 750 and 750.1 of the Insurance Code); CAL. LAB. CODE § 3217 (enacted by Chapter 116) (stating the exceptions to Section 3215 of the Labor Code).

13. *See* CAL. PENAL CODE § 7 (West 1988) (definition of knowingly).

14. *See id.* § 450(f) (West 1988) (definition of recklessly).

15. *Id.* § 549 (enacted by Chapter 116 and amended by Chapter 934). First convictions for such a crime are punishable by: (1) Imprisonment in the county jail for a term not exceeding one year; (2) imprisonment in the state prison for 16 months, two or three years; (3) a fine of no more than \$10,000; or (4) both incarceration and a fine. *Id.* Second convictions are punishable by

Chapter 934 revises the punishment for second or subsequent convictions of this crime.¹⁶

Under existing law, the Insurance Frauds Prevention Act¹⁷ provides that it is a felony to commit specified acts¹⁸ with regard to insurance claims.¹⁹ Existing law also requires insurers,²⁰ who believe that a fraudulent claim²¹ is being made, to report such fraud to the Bureau of Fraudulent Claims (Bureau).²² Chapter 934 additionally provides that it is also a felony to make specified misrepresentations in regard to workers' compensation claims,²³ and authorizes the Bureau to conduct certain investigations and

imprisonment in the state prison. *Id.* Under prior law, second convictions were punishable by imprisonment in the state prison for sixteen months, or two or three years, by a fine of not exceeding \$10,000, or both a fine and imprisonment. 1991 Cal. Stat. ch. 116, sec. 9 at ____ (enacting CAL. PENAL CODE § 549).

16. *Id.* Chapter 934 deletes the length requirements for prison sentences and the fine for second convictions. See 1991 Cal. Stat. ch. 116, sec. 35 at ____ (enacting CAL. PENAL CODE § 549).

17. See CAL. INS. CODE §§ 1871-1876.5 (West 1989 & Supp. 1991) (listing the details of the Insurance Frauds Prevention Act).

18. See *id.* § 1871.1(a) (West Supp. 1991) (stating that it is unlawful to knowingly: (1) Present any false or fraudulent claim for the payment of a loss, including a payment of a loss under an insurance contract; (2) present multiple claims for the same loss or injury with the intent to defraud; (3) cause or participate in a vehicular collision or accident in order to present a false or fraudulent claim; (4) present a false or fraudulent claim to obtain payments for a loss due to theft, destruction, damage, or conversion of a motor vehicle; (5) make any writing with the intent to use the same in support of a false or fraudulent claim; or (6) assist, abet, solicit, or conspire with any person to do any of the above acts).

19. *Id.*

20. See *id.* § 1872.2 (West Supp. 1991) (definition of insurer); § 1877.1(c) (enacted by Chapter 116 and amended by Chapter 934) (definition of insurer).

21. See *id.* § 1873.3(a) (enacted by Chapter 116) (indicating that insurance fraud does not consist of motor vehicle theft, motor vehicle insurance fraud reporting, or workers' compensation insurance fraud reporting).

22. *Id.* § 1872.4(a) (West Supp. 1991). See *id.* § 1872 (amended by Chapter 934) (establishing the Bureau). The Bureau must then review the report, and if the commissioner determines that fraud had been committed, the commissioner must report this to the insurer, the licensing agency, and to the district attorney. *Id.* § 1872.4(a) (West Supp. 1991).

23. See *id.* § 1871.4(a) (enacted by Chapter 116 and amended by Chapter 934) (providing that it is unlawful to knowingly: (1) Cause false or fraudulent material statements or representations in order to obtain or deny compensation; (2) present any false or fraudulent written or oral material statement in support of, or in opposition to, any compensation claim for the purpose of obtaining or denying compensation; (3) assist, abet, solicit, or conspire with another who violates this section; and (4) make false or fraudulent statements regarding entitlement to benefits in order to discourage an injured worker from claiming benefits or pursuing a claim).

enforcement activities in connection with those misrepresentations.²⁴ Further, Chapter 116 establishes the Workers' Compensation Insurance Fraud Reporting Act²⁵ which requires insurers, in certain circumstances,²⁶ to notify authorized governmental agencies²⁷ of all information relevant to a workers' compensation insurance fraud investigation.²⁸

Under existing law, it is a misdemeanor for any person to willfully misrepresent any fact in order to acquire insurance from the State Compensation Insurance Fund²⁹ at a lower rate than is proper.³⁰ Additionally, Under Chapter 934, it is either a misdemeanor or felony for any person to engage in such conduct,

24. *Id.* § 1872.3 (amended by Chapter 934). Chapter 934 also requires the Bureau to furnish to the Insurance Commissioner, or the Director of Industrial Relations, the name, as well as all supporting evidence, of any insurer who is suspected of fraudulently denying insurance claims. *Id.* § 1872.83(a) (enacted by Chapter 116 and amended by Chapter 934). Further, Chapter 934 requires insurers to pay an annual assessment to fund the investigation and prosecution of increased workers' compensation fraud. *Id.* § 1872.83(b) (enacted by Chapter 116 and amended by Chapter 934).

25. *See id.* §§ 1877, 1877.4 (enacted by Chapter 116); §§ 1877.1, 1877.3, 1877.5 (enacted by Chapter 116 and amended by Chapter 934) (creating the Workers' Compensation Insurance Fraud Reporting Act and establishing requirements for when insurers are required to report workers' compensation insurance fraud).

26. *See id.* § 1877.3(a) (enacted by Chapter 116) (stating that an insurer who receives a written request from an authorized governmental agency must release to that agency all relevant information that the insurer possess in regard to the workers' compensation fraud investigation); § 1877.3(b) (enacted by Chapter 116) (indicating that an insurer must notify the local district attorney's office or the Bureau, when it knows or reasonably believes it knows of a person whom has committed workers' compensation fraud, and the insurer believes that act has not been reported to an authorized governmental agency).

27. *See id.* § 1877.1(a) (enacted by Chapter 116 and amended by Chapter 934) (definition of authorized governmental agency).

28. *Id.* § 1877.3(a)-(b) (enacted by Chapter 116 and amended by Chapter 934). *See id.* § 1877.4 (enacted by Chapter 116) (providing that any information received by a governmental agency must not be a part of the public record and may not be released to unauthorized persons); § 1877.4(b) (enacted by Chapter 116) (stating that any such information is privileged); § 1877.5 (enacted by Chapter 116) (indicating that an insurer who provides such information will not be subject to civil liability in a cause of action of any kind if it acts in good faith and reasonably believes the action taken was warranted by the facts known at that time).

29. *See id.* §§ 11770-11881 (West 1988 & Supp. 1991) (providing for powers and duties of the State Compensation Insurance Fund).

30. *Id.* § 11880(a) (amended by Chapter 934). Under 1935 Cal. Stat. ch. 145, sec. 11880, at 731, it was expressly stated that it was also a misdemeanor for any person to willfully misrepresent any fact in order to obtain any payments out of that State Compensation Insurance Fund. 1935 Cal. Stat. ch. 145, sec. 11880, at 731. Apparently, the legislature intentionally deleted this provision from the statute because it felt that this crime is now provided for in section 1871.4(a) of the Insurance Code. Telephone conversation with Richard Markuson, Legislative Consultant for Senator Presley, California State Senate (September 24, 1991) (notes on file at the *Pacific Law Journal*).

or for any person to willfully misrepresent any fact so as to obtain workers' compensation insurance at a rate lower than what is considered proper for that insurance.³¹

Under existing law, the Industrial Medical Council (IMC)³² must appoint qualified medical evaluators (QMEs)³³ to evaluate medical issues regarding workers' compensation.³⁴ Chapter 116 authorizes the IMC to review advertising copy³⁵ and to require QMEs to keep a file of all advertising copy for ninety days.³⁶ Chapter 116 also prohibits any person or entity, who is to pay for workers' compensation services or benefits, from advertising, printing, displaying, publishing, distributing, or broadcasting any false or misleading statements³⁷ regarding those services or benefits.³⁸

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31. CAL. INS. CODE § 11760(a) (enacted by Chapter 116, amended and renumbered by Chapter 934); § 11880(a) (amended by Chapter 934). Persons with a prior felony conviction for a violation of section 11670(a) or section 11880(a) will receive a two-year enhanced sentence for each prior conviction. *Id.* § 11760(b) (amended and renumbered by Chapter 934); 11880(b) (amended and renumbered by Chapter 934).

32. *See* CAL. LAB. CODE § 139 (West Supp. 1991) (setting forth the composition, terms, qualifications, and duties of the council members).

33. *See id.* § 139.2 (West Supp. 1991) (setting forth the terms of appointments and requirements for becoming a QME, the standards and procedures for QMEs, and the circumstances for suspending or terminating a QME).

34. *Id.* § 139.2(a) (West Supp. 1991).

35. *See id.* § 139.4(a) (enacted by Chapter 116) (requiring the IMC to review the advertising copy to ensure compliance with section 651 of the Business and Professions Code).

36. *Id.* § 139.4(a) (enacted by Chapter 116). *See id.* § 139.4(b) (enacted by Chapter 116) (prohibiting the use of an advertising copy after the IMC has disapproved of it and informed the QME of the disapproval); § 139.4(c) (enacted by Chapter 116) (stating that a QME who has violated any provision of section 139.4 may be terminated, suspended, or placed on probation by the IMC); § 139.45(a) (enacted by Chapter 116) (indicating that the IMC and the Department of Consumer Affairs must be particularly careful to avoid false or misleading workers' compensation advertisements regarding industrial injuries or illnesses).

37. *See id.* § 139.45(b) (enacted by Chapter 116) (definition of false or misleading statements).

38. *Id.* § 139.43(a) (enacted by Chapter 116). *See id.* § 139.43(c) (enacted by Chapter 116) (providing that any violation of section 139.43(a) constitutes a misdemeanor punishable by imprisonment in the county jail for no more than one year, or by a fine not exceeding \$10,000, or both).

Insurance; violations

Insurance Code §§ 728, 1748.5 (new); § 1067.18 (amended).

SB 389 (Johnston); 1991 Cal. STAT. Ch. 771

Under existing law, the Insurance Commissioner may deny an application to conduct business, or may revoke or suspend a license to conduct business of a controlling person¹ who is guilty of fraud or has been convicted of a crime.² Chapter 771 expands the scope of a subject person's³ prohibited conduct⁴ and allows the Commissioner, upon written notice, to immediately suspend the party's license and to impose civil penalties.⁵

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1. See CAL. INS. CODE § 1668.5(b) (West Supp. 1991) (defining a controlling person as one who has the power to direct the management and policies of the organization).

2. *Id.* § 1668.5(a) (West Supp. 1991).

3. See *id.* § 728(a)(1) (enacted by Chapter 771) (defining a subject person as a director, officer, employee or other natural person who participates in the management, direction or control of an insurer). See also *id.* § 728(a)(2) (enacted by Chapter 771) (definition of insurer).

4. See *id.* § 728(b) (enacted by Chapter 771) (describing prohibited conduct as engaging in a pattern of misconduct causing an insurer to suffer substantial financial loss or endangering the solvency of an insurer, which demonstrates unfitness to continue as a subject person).

5. *Id.* § 728 (enacted by Chapter 771). The subject person is entitled to a hearing after the suspension of the license to conduct business. *Id.* Compare CAL. BUS. & PROF. CODE § 6007 (West 1990) (authorizing the State Bar to suspend an attorney's license in the case of misconduct) and CAL. GOV'T CODE § 11529 (West Supp. 1991) (allowing the Division of Medical Quality to suspend a doctor's license) with CAL. INS. CODE § 728 (enacted by Chapter 771) (allowing the Commissioner to suspend the license of a party who is guilty of fraud or convicted of a crime and to impose civil penalties). In addition to expanding the authority of the Insurance Commissioner to sanction a director of an insurance company, Chapter 771 also authorizes the Commissioner to suspend the licenses of or otherwise similarly penalize production agents. *Id.* § 1748.5 (enacted by Chapter 771).

